



Schools & Libraries Division

Notification of Commitment Adjustment Letter

Funding Year 2002: July 1, 2002 - June 30, 2003

May 4, 2011

Anthony Natoli
Independent Computer Maintenance, LLC
1037 Route 46 East
Clifton, NJ 07013

Re: SPIN: 143026575
Service Provider Name: Independent Computer Maintenance, LLC

Form 471 Application Number: 307730
Funding Year: 2002

FCC Registration Number:

Applicant Name KEARNY CHRISTIAN ACADEMY
Billed Entity Number: 227328
Applicant Contact Person: DAVID MANZO

Our routine review of Schools and Libraries Program funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust the overall funding commitment. The purpose of this letter is to make the required adjustments to the funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the service provider is responsible for all or some of the program rule violations. Therefore, the service provider is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

Schools and Libraries Division - Correspondence Unit
100 South Jefferson Road, P.O. Box 902, Whippany, NJ 07981
Visit us online at: www.usac.org/sl

TO APPEAL THIS DECISION:

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. If you wish to appeal the Commitment Adjustment Decision indicated in this letter, your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
 - Billed Entity Name,
 - Form 471 Application Number,
 - Billed Entity Number, and
 - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.
To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.org. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
100 S. Jefferson Rd.
P. O. Box 902
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to the applicant for informational purposes. If USAC has determined the applicant is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the applicant detailing the necessary applicant action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or the applicant(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds the Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the service provider is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: DAVID MANZO
KEARNY CHRISTIAN ACADEMY

Funding Commitment Adjustment Report
Form 471 Application Number: 307730

Funding Request Number:	799828
Contract Number:	10685
Services Ordered:	INTERNET ACCESS
Billing Account Number:	
Original Funding Commitment:	\$35,775.00
Commitment Adjustment Amount:	\$35,775.00
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$35,775.00
Funds to be Recovered from Service Provider:	\$35,775.00

Funding Commitment Adjustment Explanation:

On May 19, 2006, the FCC released order FCC 06-55 remanding this application back to USAC for further consideration. Pursuant to the applicants request of June 20, 2006, the funding commitment for FRN 799828 was cancelled in its entirety. Since the FCC rules require that the USAC recover funds that were disbursed over the commitment, USAC will seek recovery of any disbursed funds from the service provider.

Funding Request Number:	799843
Contract Number:	10686
Services Ordered:	INTERNET ACCESS
Billing Account Number:	
Original Funding Commitment:	\$11,448.00
Commitment Adjustment Amount:	\$11,448.00
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$11,448.00
Funds to be Recovered from Service Provider:	\$11,448.00

Funding Commitment Adjustment Explanation:

On May 19, 2006, the FCC released order FCC 06-55 remanding this application back to USAC for further consideration. Pursuant to the applicants request of June 20, 2006, the funding commitment for FRN 799843 was cancelled in its entirety. Since the FCC rules require that the USAC recover funds that were disbursed over the commitment, USAC will seek recovery of any disbursed funds from the service provider.

Enclosure F

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Academy of Careers and Technologies)	File Nos. SLD-418938, <i>et al.</i>
San Antonio, TX, <i>et al.</i>)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: May 2, 2006

Released: May 19, 2006

By the Commission:

I. INTRODUCTION

1. In this Order, we grant 30 appeals of decisions by the Universal Service Administrative Company ("Administrator" or "USAC") denying 134 requests for funding from 96 participants in the schools and libraries universal service support mechanism on the grounds that they violated the Commission's competitive bidding rules.¹ As explained below, we find that USAC improperly denied the requests for funding without sufficiently examining whether the Commission's rules were violated due to improper third-party participation in the applicants' competitive bidding processes, and remand the underlying applications associated with these appeals to USAC for further action consistent with this Order. In addition, we direct the Administrator to conduct further investigation and analysis prior to denying funding for suspected competitive bidding violations of the type addressed herein, and to provide applicants with an opportunity to demonstrate that they did not violate the Commission's competitive bidding rules. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each application (and issue an award or a denial based on a complete review and analysis) listed in the Appendix no later than 120 days from release of this Order.

II. BACKGROUND

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, apply for discounts for eligible telecommunications services, Internet access, and internal connections.² The applicant, after developing a technology plan, files the FCC Form 470 ("Form 470") with the Administrator to request discounted

¹ The list of appeals is attached in the Appendix. These Requests for Review were filed pursuant to sections 54.719-54.721 of the Commission's rules. 47 C.F.R. §§ 54.719-54.721.

² 47 C.F.R. § 54.505.

services.³ The Form 470 is posted on USAC's website for at least 28 days, during which time interested service providers may submit bids to provide the requested services.⁴ The applicant must consider all submitted bids prior to entering into a contract; price must be the primary factor in selecting a bid.⁵ Under the Commission's competitive bidding rules, the service provider may not participate in the bidding process.⁶ After entering into a contract for eligible services, the applicant files the FCC Form 471 ("Form 471").⁷ USAC assigns a funding request number ("FRN") to each request for discounted services, and issues funding commitment decision letters ("FCDLs") approving or denying the requests for discounted services.

3. Among other things, USAC is responsible for administering the application process for the schools and libraries universal service support mechanism.⁸ Pursuant to this authority, USAC developed a procedure to detect applications that may be in violation of the Commission's competitive bidding rules by searching for similar language used in Form 470s filed by other schools, libraries, and consortia that selected the same service provider through their competitive bidding processes.⁹ This procedure, described by USAC as "pattern analysis," contemplates the possibility that a group of applicants, all with the same service provider, violated the competitive bidding rules.

4. The Commission has under consideration 30 appeals filed by parties that have requested funding for discounted services under the schools and libraries universal service support mechanism.¹⁰ Petitioners appeal decisions denying requests for funding from the schools and libraries universal service support mechanism due to a failure to comply with the Commission's competitive bidding rules, as identified by USAC's "pattern analysis" procedure. These 30 applicants had in total selected eight service providers.¹¹ Many of these applicants are among the neediest schools and libraries in the country; we estimate that more than 75% of these applicants were eligible for a 90 percent discount on eligible services. We further estimate that these 30 appeals involve approximately \$38 million in funding for 99 applicants for funding during Funding Years 2002-2004, and note that these funds have already been

³ If the technology plan has not been approved when the applicant files the Form 470, the applicant must certify that it understands that the technology plan must be approved prior to commencement of service. 47 C.F.R. § 54.504(b)(2)(vii).

⁴ 47 C.F.R. § 54.504(b)(4).

⁵ 47 C.F.R. § 54.511(a).

⁶ See *Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028, 4032-33, para. 10 (2000).

⁷ This form is to request discounts on those services and it contains the discount calculation worksheet and the discount funding request. The Form 471 generally must be filed each time a school or library orders telecommunications services, Internet access, or internal connections. See 47 C.F.R. §§ 54.504, 54.511(c).

⁸ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21, and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058, 25064-65, para. 12 (1998).

⁹ See email from Catriona Ayer, USAC, to Vickie Robinson, Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, FCC (May 2, 2005).

¹⁰ See Appendix.

¹¹ The selected service providers were: Spectrum Communications, Diversified Computer Solutions, SEND Technologies, Communications Data and Security, VIP Technologies, Ed Tec Solutions, American Internet Group, and RGC and Associates.

collected and held in reserve. Therefore, our actions taken in this Order should have minimal impact on the Universal Service Fund ("USF").¹²

5. After identifying applications that incorporate similar language through its "pattern analysis" procedure, USAC typically informs applicants that "similarities in Forms 470 among applicants associated with this vendor indicate that the vendor was improperly involved in the competitive bidding and vendor selection process," and rejects the applicants' FRNs.¹³ Although the precise language may vary slightly, the record before us indicates that no other detail concerning a violation of Commission rules is provided to applicants.¹⁴ That is, USAC denied the applicants' requests for funding solely based on this pattern analysis procedure; the record does not indicate that USAC made any formal findings or gathered additional facts prior to denying the requests for funding, or that USAC identified any school-specific violations of our competitive bidding rules.

III. DISCUSSION

6. After reviewing the record, we grant the instant Requests for Review and remand them to USAC for further consideration. We conclude that USAC denied the requests for funding without sufficiently determining that the service providers improperly participated in the applicants' bidding processes. In short, USAC presumed that these schools violated the competitive bidding rules based on a review of another applicant's information, and without performing any applicant-specific evaluations. The "pattern analysis" procedure may be helpful to identify applications for further review to determine if the applicant violated our competitive bidding rules; however, the mere presence of similar language in Form 470s by different program participants ultimately selecting the same service provider is not sufficient evidence of a rule violation. Indeed, there are many legitimate reasons why applicants could have used similar language in their applications; for example, they may have used the same consultant, attended the same seminar or training program, or modeled their responses from the same website.¹⁵ None of these legitimate reasons would support a finding that the school or library violated the competitive bidding rules. It appears from the record, however, that USAC never attempted to ascertain the reason for similar applications prior to denying funding based on its "pattern analysis" procedure or obtain additional information to determine whether the applicant violated the competitive bidding rules. In one group of denied Funding Year 2004 applications, for example, one of the "similarities" was the school identifier assigned by the state.¹⁶ According to this petitioner, SEND Technologies, "USAC remained unaware that the similarities were easily explained and were not indicative of rule violations or

¹² See, e.g., Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2005, dated August 2, 2005. With further investigation, as discussed in this Order, USAC can determine which of these applications should be granted and which involve violations of our competitive bidding rules. In addition, USAC will ascertain whether the relief sought by the applicant was in fact granted in a subsequent year, but the applicant neglected to withdraw the appeal.

¹³ This explanation is in the FCDLs for each of the applicants listed in the Appendix. In some of the files, the language varies, e.g., "similarities in Forms 470 and selective review responses among applicants associated with this vendor indicate that the vendor was improperly involved in the competitive bidding process."

¹⁴ See, e.g., Consolidated Request for Review of the Decisions of the Universal Service Administrator, Morehouse Parish School District and Jackson Parish School District, at 4-5 (filed Jan. 10, 2005) ("Morehouse and Jackson Appeal").

¹⁵ See, e.g., Rosemead Elementary Unified School District Request for Review at 2-4 (filed Nov. 21, 2004).

¹⁶ See Letter from Jennifer L. Richter, Patton Boggs LLP, Counsel to Nexus Systems, Inc. and Send Technologies, LLC to Marlene H. Dortch, Secretary, FCC, filed in CC Docket No. 02-6 (July 8, 2005) at 2 ("July 8, 2005 Letter").

impermissible service provider involvement.”¹⁷ In addition, the record reflects that USAC failed to identify the specific language in the Form 470s that it deemed “similar.”¹⁸ We agree with the Petitioners that without specific information to determine the basis for the denial, applicants cannot provide comprehensive responses to USAC’s arguments.

7. For these reasons, we find that when USAC suspects that a service provider has improperly participated in an applicant’s bidding process due to the results of its “pattern analysis” procedure, it is incumbent on USAC to conduct further investigation and analysis prior to denying funding.¹⁹ Specifically, USAC should review these applications fully, and should not issue summary denials of requests for funding solely because applications contain similar language. If an entity is able to demonstrate that it fully complied with all program rules and did not, for example, violate the Commission’s competitive bidding rules, then USAC should not deny funding on the basis of the “pattern analysis” procedure. We therefore grant the Requests for Review listed in the Appendix attached to this Order and remand the underlying applications associated with these appeals to USAC for further action consistent with this Order.²⁰ To ensure these issues are resolved expeditiously, we direct USAC to complete its review of the applications (and issue an award or a denial based on a complete review and analysis) listed in the Appendix no later than 120 days from release of this Order.

8. We recognize that some beneficiaries may have violated the competitive bidding rules and that shared facts may help uncover violations of our rules or waste, fraud, and abuse committed by other beneficiaries. Indeed, we recognize the utility of USAC’s pattern analysis of helping to identify malfeasance. A pattern analysis alone, however, does not determine that an applicant has violated program rules or engaged in waste, fraud, or abuse. Based on the existing program rules, USAC should not stop its review of an application and conclude that the applicant violated program rules (and then deny the funding request) solely because the application shares some language with that of another applicant who selected the same service provider. Instead, USAC should continue its evaluation to determine whether funding is warranted and whether the applicants violated program rules, including those concerns initially identified through the “pattern analysis” process. As part of its review, USAC may request that applicants submit documentation establishing the source of the language that is similar to that found in other applications. Upon completing its review, if USAC finds that the application complies with all

¹⁷ July 8, 2005 Letter at 2.

¹⁸ See, e.g., July 8, 2005 Letter at 2; Morehouse and Jackson Appeal at 4-5; Letter from Lila Wills Bronson, Ed.D, Director of Technology, Rosemead Elementary School District to Marlene H. Dortch, Secretary, FCC (June 20, 2003) at 4-5.

¹⁹ During the application review process, USAC may request additional information from applicants. See *Request for Review of the Decision of the Universal Service Administrator by Nefesh Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-27881, CC Dockets No. 95-45 and 97-21, Order, DA 99-2284, para. 3 (Com. Car. Bur., rel. Oct. 22, 1999) (“*Nefesh Academy Order*”). To ensure that the application review process for the schools and libraries program is not unduly delayed, USAC requires applicants to supply information within a reasonable time period or risk denial of the funding request. *Nefesh Academy Order* at para. 3.

²⁰ We note, however, that many of the pending appeals addressed in this Order date from Funding Year 2002, and that, due to the passage of time, such evidence may no longer be available. For example, the employees who prepared the Form 470 may have left the school system since the application was filed. USAC should look at the totality of the circumstances, including an explanation as to why evidence may no longer be available. On a going-forward basis, we expect that applicants will have better documentation to support their applications. See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15823-24, para. 47 (requiring applicants and service providers to retain all records related to the application for, receipt and delivery of discounted services for a period of five years after the last day of service delivered for a particular funding year).

applicable program rules and that USF funding is warranted, it should authorize funding. We recognize that, after USAC completes its application review procedures for the appeals identified in this Order, it may conclude that funding is not warranted and deny the request.



IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), this Order IS ADOPTED.

10. IT IS FURTHER ORDERED that any and all pending appeals before this Commission identified in the Appendix of this Order ARE REMANDED to the Administrator for further consideration in accordance with the terms of this Order.

11. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, USAC SHALL COMPLETE its review of each remanded application (and issue an award or a denial based on a complete review and analysis) listed in the Appendix no later than 120 days from release of this Order.

FEDERAL COMMUNICATIONS COMMISSION


Marlene H. Dortch
Secretary

APPENDIX**A. Requests for Review Filed By Applicants for E-Rate Funding**

Applicant	Service Provider	Application Number	Funding Year
Academy of Careers and Technologies San Antonio, TX	RGC and Associates, Inc.	418938	2004
El Paso School of Excellence El Paso, Texas	RGC and Associates, Inc.	408268	2004
Lake Grove at Maple Valley, Inc., Lake Grove Schools Wendall, MA	Ed Tec Solutions, LLC	380920	2003
Lake Grove Durham School, Lake Grove Schools Durham, CT	Ed Tec Solutions, LLC	380528	2003
Lake Grove Schools Lake Grove, NY	Ed Tec Solutions, LLC	381301	2003
Mountain Lake Children's Residence, Inc., Lake Grove Schools Lake Placid, NY	Ed Tec Solutions, LLC	380723	2003
Positive Solutions Consortium San Antonio, TX	RGC and Associates, Inc.	409745	2004
Rosemead Elementary School District Rosemead, CA	Spectrum Communications Cabling Services, Inc.	303357	2002
Webster Parish School District	SEND Technologies, LLC	363968	2003
Yeshiva Masoras Avos Lakewood, NJ	Communications Data and Security, Inc.	294999	2002
Yeshiva Masoras Avos Lakewood, NJ	Communications Data and Security, Inc.	347572	2003
Yeshivath Viznitz D'Khal Torah Chaim Monsey, NY	Communications Data and Security, Inc.	287318	2002

B. Requests for Review Filed by Service Providers on Behalf of Individual Applicants

Service Provider	Applicant	Application Number	Funding Year
American Internet Group, LLC	Plymouth Educational Center Charter Schools Detroit, MI	428762	2004
Independent Computer Maintenance, LLC	Al-Ghazaly Elementary School Jersey City, NJ	310917	2002
Independent Computer Maintenance, LLC	Dar Al-Hikmah Elementary School	310459	2002



	Prospect park, NJ		
Independent Computer Maintenance, LLC	Horizon School Livingston, NJ	316671	2002
Independent Computer Maintenance, LLC ²¹	Kearny Christian Academy Kearny, NJ	307730	2002
Independent Computer Maintenance, LLC	New Visions Academy Newark, NJ (Diversified Computer Solutions was former service provider)	309196	2002
Spectrum Communications Cabling Services, Inc.	Corona-Norco Unified School District Norco, CA	362456	2003
Spectrum Communications Cabling Services, Inc.	Rosemead Elementary Unified School District Rosemead, CA	366569	2003

C. Consolidated Requests for Review Filed by Service Providers on Behalf of Individual Applicants

1. Applications Consolidated in a Request for Review filed by Communications Data and Security, Inc., filed June 14, 2004:

Applicant	Application Number	Funding Year
Bais Chinuch Hayoshen Monsey, NY	294981	2002
Bais Tova	287825	2002
Bais Yaakov High School of Lakewood, Inc.	287451	2002
Beth Rivka School Brooklyn, NY	287822	2002
Bnos Chayil	288799	2002
Congregation Bnai Yoel Monroe, NY	300877, 293323, 322057	2002
Congregation Machzikei Hadas of Belz	293889	2002
Congregation Noam E. Lizensk	287796	2002
Congregation Noiam Mgodim	296699, 322734	2002
Generation Christian Academy	297919	2002
Kavanas Halev	294702, 287455	2002
Lakewood Cheder School	287220	2002
Machne Karlin Stolin	313957	2002
Midrach L'Man Achai	324976, 300353, 294833	2002

²¹ Kearny Christian Academy also filed its own Request for Review for the same FCC Form 471 application number on August 30, 2004.

Shaar Ephraim	287472	2002
Talmud Torah Bais Yechiel	287833	2002
Talmud Torah of Lakewood	287134, 287198	2002
Talmud Torah Tzoin Yosef Pupa, Inc.	287216	2002
Tiferes Academy	304794	2002
Toras Imecha	292962	2002
United Talmudical Academy Monroe, NY	295523, 295698, 295714, 307138, 293464, 291564	2002
Viznitzer Chaider Tiferes Yisroel	293267, 293268, 294911	2002
Westchester Special Education School	298475	2002
Yeshiva Avir Yakov	294954, 295067, 305386	2002
Yeshiva Beth David School	300860, 300896	2002
Yeshiva Bnos Ahavas Israel	287293, 287295, 321381	2002
Yeshiva Imrei Chaim Viznitz of Borobark	293311	2002
Yeshiva Imrei Yosef School	301267, 293315	2002
Yeshiva Jesode Hatorah	293419, 295822	2002
Yeshiva Kehilath Yakov School	316264	2002
Yeshiva Masoras Avos	294999	2002
Yeshiva Sharei Hayosher School Brooklyn, NY	307166, 307180	2002
Yeshiva Toras Chaim	317828	2002
Yeshiva Tzemach Tzadik Viznitz	295300	2002
Yeshiva Zichron Mayir	287235, 287238	2002
Yeshivath Viznitz D'Khal Torath Chaim	307499, 287319	2002

2. Applications Consolidated in a Request for Review filed by Ed Tec Solutions, LLC, filed May 19, 2005:

Applicant	Application Number	Funding Year
California Academy for Liberal Studies Los Angeles, CA	345392	2003
Crystal Springs School A Program of IDDI Assonet, MA	345507	2003
Green Chimneys School Brewster, NY	378380	2003
Leary School – Prince Georges County Oxon Hill, VA	345527	2003

Leary School of Virginia Alexandria, VA	345533	2003
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3. Applications Consolidated in a Request for Review filed by Ed Tec Solutions, LLC, filed May 18, 2005:

Applicant	Application Number	Funding Year
Family Charter School Philadelphia, PA	345475	2003
Green Chimneys School Brewster, NY	345498	2003
Westchester Special Ed School Yonkers, NY	345491	2003

4. Applications Consolidated in a Request for Review filed by Ed Tec Solutions, LLC, filed May 19, 2005:

Applicant	Application Number	Funding Year
Audrey Lorde School New York, NY	345394	2003
Graydon Manor School Leesburg, VA	345402	2003

5. Applications Consolidated in a Request for Review filed by SEND Technologies, LLC, filed August 23, 2004:

Applicant	Application Number	Funding Year
Richland Parish School District Rayville, LA	291953	2002
Morehouse Parish School District Bastrop, LA	301743	2002

6. Applications Consolidated in a Request for Review filed by SEND Technologies, LLC, filed January 10, 2005 :

Applicant	Application Number	Funding Year
Jackson Parish School District Jonesboro, LA	376220	2003
Morehouse Parish School District Bastrop, LA	360815	2003

7. Applications Consolidated in a Request for Review filed by SEND Technologies, LLC, filed January 18, 2006 :

Applicant	Application Number	Funding Year
Jackson Parish School District Jonesboro, LA	423981	2004
Morehouse Parish School District Bastrop, LA	409404	2004
Franklin Academy Winnsboro, LA	412894	2004

8. Applications Consolidated in Request for Review filed by Spectrum Communications Cabling Services, Inc., filed June 19, 2003:

Applicant	Application Number	Funding Year
El Monte Unified School District El Monte, CA	311437	2002
Hemet Unified School District Hemet, CA	295589	2002
Inglewood Unified School District Inglewood, CA	313520	2002
Lucerne Valley Unified School District Lucerne Valley, CA	314228	2002
Romoland Elementary School District Homeland, CA	305956	2002
Rosemead Elementary Unified School District Rosemead, CA	303357	2002

9. Applications Consolidated in Request for Review filed by VIP Technologies, LLC., filed March 8, 2005:

Applicant	Application Number	Funding Year
Alachua Learning Center Alachua, FL	418579	2004
Audrey Lorde School New York, NY	418559	2004
Bethesda Childrens' Home Meadville, PA	411830	2004
Chimes School Baltimore, MD	421161	2004
Crystal Springs School, a program of IDDI Assonet, MA	411722	2004

Everglades Preparatory Academy Pahokee, FL	418626	2004
Family Charter School Philadelphia, PA	411674	2004
Gateway-Lynde School Buffalo, NY	418701	2004
Glades Academy of Agricultural and Ecological Studies Pahokee, FL	418682	2004
Green Chimneys School Brewster, NY	411712	2004
Highville Mustard Seed Charter School Hamden, CT	420329	2004
James M. Singleton Charter Middle School New Orleans, LA	412567	2004
Lakeview Charter Academy San Fernando, CA	429410	2004
Lift for Life Academy St. Louis, MO	418553	2004
Macsa Academic Calmecac San Jose, CA	427482	2004
North County Charter School Opalocka, FL	431395	2004
School of Excellence in Education Charter School San Antonio, TX	418635	2004
Survivors Charter School West Palm Beach, FL	418464	2004
The Chiles Academy Port Orange, FL	412585	2004
Torah High School of Long Beach Long Beach, NY	425176	2004
Woods School Langhorne, PA	412885	2004
Yeshiva Tiferes Torah School Lakewood, NJ	430667	2004
Youth Opportunities Upheld, Inc. Worcester, MA	418598	2004

10. Applications Consolidated in a Request for Review filed by VIP Technologies, LLC., filed February 15, 2005:

Applicant	Application Number	Funding Year
Florida International Academy Miami, FL	411456	2004
Golden Rule Charter School Dallas, TX	412493	2004
Redemptive Life Academy West Palm Beach, FL	415411	2004
New Frontier Charter School San Antonio, TX	418517	2004
Tri-L Christian Academy Orlando, FL	424917	2004
Parkway Academy Miramar, FL	431407	2004
Northeast Academy 1 Opalocka, FL	431840	2004
Downtown Miami Charter School Miami, FL	432551	2004

Enclosure G

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19 FCC Rcd 15252; 2004 FCC LEXIS 4327, *

In the Matter of Federal-State Joint Board on Universal Service; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.; Schools and Libraries Universal Service Support Mechanism

3 CC Docket No. 96-45; CC Docket No. 97-21; CC Docket No. 02-6

FEDERAL COMMUNICATIONS COMMISSION

19 FCC Rcd 15252; 2004 FCC LEXIS 4327

RELEASE-NUMBER: FCC 04-181

July 30, 2004, Released; July 23, 2004, Adopted

ACTION: [*1] ORDER ON RECONSIDERATION AND FOURTH REPORT AND ORDER

JUDGES:

By the Commission

OPINION:

I. INTRODUCTION

1. In this order, we address pending petitions for reconsideration filed by Sprint Corporation (Sprint), United States Telecom Association, Inc. (USTA), and MCI Worldcom, Inc. (MCI). n1 Petitioners seek reconsideration of an order which, among other things, directed the Universal Service Administrative Company (Administrator or USAC) to cancel any funding commitments under the schools and libraries support mechanism that were made in violation of the Communications Act, as amended (the Act), and to recover from the service providers any funds that had already been distributed pursuant to an unlawful funding decision. n2 For the reasons discussed below, we agree with petitioners that we should seek recovery from schools and libraries in certain instances, and therefore grant their petitions in part. We also resolve the limited question raised in the *Second Further Notice* in CC Docket No. 02-06 of from whom we will seek recovery of schools and libraries funds disbursed in violation of the statute or a rule. n3 We modify our requirements in this area so that recovery is directed at whichever [*2] party or parties has committed the statutory or rule violation.

n1 Petition for Reconsideration of Commitment Adjustment Order by United States Telecom Association, CC Docket Nos. 96-45 and 97-21, filed November 8, 1999 (USTA Petition); Request for Reconsideration of Adjustment Order by Sprint Corporation, CC Docket Nos. 96-45 and 97-21, filed November 8, 1999 (Sprint Petition); Petition for Reconsideration of Adjustment Order by MCI-Worldcom, Inc., CC Docket Nos. 96-45 and 97-21, filed November 8, 1999 (MCI Petition).

n2 *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 97-21 and 96-45, Order, FCC 99-291 (rel. Oct. 8, 1999) (*Commitment Adjustment Order*).

n3 See Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912 (2003) (Second Further Notice). We will address other issues raised in the Second Further Notice in one or more later decisions.

II. BACKGROUND

2. Under section 254(h)(1)(B) of the Act, "all telecommunications carriers serving a geographic area [*3] shall, upon a bona fide request for any of [their] services that are within the definition of universal service under subsection (c)(3) of this section, provide such services to elementary schools, secondary schools, and libraries for educational purposes" at discounted rates. n4 Under section 254(h)(1)(B)(ii), carriers providing discounted service pursuant to 254(h)(1)(B) are entitled to receive reimbursement from the universal service support fund. n5 In the Universal Service Order and subsequent implementing orders, the Commission implemented this statutory mandate by establishing the schools and libraries universal service support mechanism and assigning the day-to-day tasks of running the program to the Administrator. n6 Under this program, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply to the Administrator for discounts on eligible telecommunications services, Internet access, and internal connections. n7 After an applicant is approved for discounted service, the Administrator reimburses the provider out of the universal service fund for the discounted services. n8

n4 47 U.S.C. § 254(h)(1)(B). [*4]

n5 47 U.S.C. § 254(h)(1)(B)(ii).

n6 Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (Universal Service Order), as corrected by Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), affirmed in part, Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999) (affirming Universal Service Order in part and reversing and remanding on unrelated grounds), cert. denied, Celpage, Inc. v. FCC, 120 S. Ct. 2212 (May 30, 2000), cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co., 120 S. Ct. 2237 (June 5, 2000), cert. dismissed, GTE Service Corp. v. FCC, 121 S. Ct. 423 (November 2, 2000). See also Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998) (Eighth Order on Reconsideration) (naming USAC as permanent Administrator of the universal service fund). [*5]

n7 47 C.F.R. §§ 54.502, 54.503.

n8 Universal Service Order, 12 FCC Rcd at 9026-27, 9082-83.

3. In the Commitment Adjustment Order, the Commission noted that the Administrator, through standard audit and review processes, had discovered that it had committed funding for discounts to a small number of applicants in violation of certain requirements of the Act in the first year of the schools and libraries universal service program. n9 The Act states that

only those services within the definition of "universal service" as developed by the Commission will be supported by the universal service mechanisms. n10 The Act also requires that telecommunications services provided at discounted rates to schools and libraries shall be provided only by telecommunications carriers. n11

n9 Funding Year 1998 (previously known as Funding Year 1) of the universal service support mechanism for schools and libraries began on January 1, 1998, and ended on June 30, 1999. See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order, 13 FCC Rcd 14915, 14916 (1998). [*6]

n10 47 U.S.C. § 254(h)(1)(B).

n11 47 U.S.C. § 254(h)(1)(B). In the *Universal Service Order*, the Commission determined that the term "telecommunications services" encompasses only telecommunications provided on a common carrier basis. 12 FCC Rcd at 9177-78.

4. The Administrator discovered two categories of commitments that violated these requirements: (1) commitments seeking discounts for ineligible services; and (2) commitments seeking discounts for services to be provided by non-telecommunications carriers. n12 Upon discovery of these violations, the Administrator requested guidance from the Commission on how to proceed. n13

n12 *Commitment Adjustment Order*, para. 4.

n13 *Id.* at para. 2.

5. In the *Commitment Adjustment Order*, the Commission concluded that the law required it to seek repayment of these unlawfully distributed funds. n14 It noted that in *OPM v. City of Richmond*, the Supreme Court held that, under the Appropriations Clause of the U.S. Constitution, no funds could be disbursed from the Treasury without express Congressional authorization. [*7] n15 The Commission found that, even though the schools and libraries program did not involve monies drawn from the Treasury, the principle that a federal agency could not "grant . . . a money remedy that Congress has not authorized" compelled the Commission to seek repayment of any funds distributed in violation of the Act. n16 It further noted that because disbursements in violation of the Act created a Government "claim," the Debt Collection Act (hereinafter "DCA") required it to seek repayment. n17

n14 *Id.* at para. 7.

n15 *Id.* (citing *OPM v. City of Richmond*, 496 U.S. 414, 424 (1990)).

n16 *Id.* (quoting *OPM*, 496 U.S. at 415).

n17 *Id.* at para. 10. In the *Commitment Adjustment Order*, the Commission referred to this statute as the Debt Collection Improvement Act ("DCIA"). However, the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996), merely amended the underlying statute, the Debt Collection Act of 1982, Pub. L. No. 97-365, 96 Stat. 1749 (codified as amended at 31 U.S.C. §§ 3701 et seq.) ("DCA"), which itself constituted an amendment to the Federal Claims Collection Act of 1966. We hereinafter refer to the statute as the DCA. [*8]

6. ~~The Commission stated that it would seek repayment from service providers rather than schools and libraries because the providers "actually receive disbursements of funds from the universal service support mechanism."~~ n18 It therefore directed the Administrator to (1) cancel all or any part of a commitment to fund discounts for ineligible services or the provision of telecommunications services by non-telecommunications carriers; and (2) deny payment of any requests by providers for compensation for discounts provided on such services. n19 It further directed the Administrator to seek repayment from the service provider of any unlawful funding that had already been distributed. n20 Finally, the Commission directed the Administrator to present an implementation plan for Commission approval identifying the specific amounts of funds that were wrongfully disbursed and proposing methods of collection including administrative offset where practical. n21

n18 *Id.* at para. 8.

n19 *Id.*

n20 *Id.* at para. 9.

n21 *Id.* at para. 11.

7. USTA, MCI WorldCom, and Sprint filed Petitions for Reconsideration of the *Commitment Adjustment Order*. n22 The main objection [*9] raised on reconsideration was that the Commission should seek repayment from the schools and libraries rather than service providers. n23 USTA also argued that the legal authorities relied upon by the Commission in seeking repayment are inapplicable and provide no support the Commission's decision to recover funds, and that it would violate due process for the Commission or USAC to recover alleged unlawful payments when the Commission has established no rules providing for the recovery of alleged unlawful payments. n24

n22 *Public Notice, Correction*, Report No. 2425, released July 13, 2000; erratum released July 24, 2000, 2000 WL 963967 (F.C.C.). Comments in support of the petitions for reconsideration were filed by Nextel Communications, Inc. and AT&T Corp.

n23 See, e.g., MCI WorldCom Petition at 3-6; Sprint Petition at 2-3; USTA Petition at 7.

n24 USTA Petition.

8. Pursuant to the *Commitment Adjustment Order*, USAC submitted to the Commission its plan to collect universal service funds that were disbursed in violation of the statute or a rule.

n25 Subsequently, in 2000, a group of service providers (which included petitioners) proposed [*10] an alternate plan of recovery. n26 The principal feature of the service providers' proposed plan was that in all cases of wrongful funding, except where funding was issued for work done by an ineligible provider, the service provider would be reimbursed for any discounted service performed prior to notice of funding adjustment, and the Administrator would recover funding from the schools or libraries directly. Later in 2000, the Commission adopted with minor modifications USAC's plan to implement the requirements of the *Commitment Adjustment Order*. n27

n25 See Letter from D. Scott Barash, Vice President and General Counsel, USAC, to Magalie Roman Salas, Secretary, Federal Communications Commission, dated October 1, 1999.

n26 *Ex Parte Letter*, from AT&T Corp., CommNet Cellular, Inc., the Competitive Telecommunications Association, MCI WorldCom, Inc., Nextel Communications, Sprint Corporation, and the United States Telecom Association, CC Dockets No. 97-21 and 96-45, filed February 1, 2000 (*Ex Parte Letter*).

n27 *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, 15 FCC Rcd 22975 (2000) (*Commitment Adjustment Implementation Order*), petition for review pending sub. nom. *United States Telecom Ass'n v. FCC*, Case Nos. 00-1501, 00-1501 (D.C. Cir. filed Nov. 27, 2000). [*11]

9. Since then, USAC has pursued recovery for both statutory and rule violations from service providers consistent with the requirements of the *Commitment Adjustment Order* and the *Commitment Adjustment Implementation Order*. In 2003, the Commission sought comment generally in the *Schools and Libraries Second Further Notice* whether additional safeguards or procedures are needed to address the matter of funds disbursed in violation of the statute or a rule. Among other things, we specifically sought comment on whether to modify our current requirement that recovery be directed at service providers. n28

n28 *Second Further Notice*, 18 FCC Rcd at 26947.

III. DISCUSSION

10. Based on the more fully developed record now before us, we conclude that recovery actions should be directed to the party or parties that committed the rule or statutory violation in question. n29 We do so recognizing that in many instances, this will likely be the school or library, rather than the service provider. We thus grant the petitions for reconsideration in part, and deny the petitions to the extent they argue that recovery should always be directed at the school [*12] or library. This revised recovery approach shall apply on a going forward basis to all matters for which USAC has not yet issued a demand letter as of the effective date of this order, and to all recovery actions currently under appeal to either USAC or this agency. We do not intend to modify any recovery action in which the service provider has satisfied the outstanding obligation or for which USAC has already issued an initial demand letter. n30

n29 USTA Petition at 5; Sprint Petition at 1; MCI Petition at 2. Numerous parties that filed comments on this issue in the rulemaking docket support this change. See Bellsouth

Comments at 4; Cox Comments at 9; GCI Comments at 5; Qwest Comments at 10; SBC Comments at 5; Sprint Comments at 7-8; Verizon Comments at 4-5; Hayes Reply at 5; IBM Reply at 7; Nextel Reply at 2.

n30 We note, however, that any service provider is free to challenge a recovery action directed to it if the time frame for seeking an appeal from USAC or the Commission has not yet run.

11. We now recognize that the beneficiary in many situations is the party in the best position to ensure compliance with the statute and our schools and libraries support mechanism [*13] rules. At the time the Commission adopted the *Commitment Adjustment Order*, USAC had been distributing funds through the schools and libraries mechanism for only one year. The Commission and USAC then faced a limited range of situations in which statutory or rule violations had occurred requiring the recovery of funds. n31 Thus, the Commission lacked a full appreciation for the wide variety of situations that could give rise to recovery actions in which the school or library would be the party most culpable. The school or library is the entity that undertakes the various necessary steps in the application process, and receives the direct benefit of any services rendered. The school or library submits to USAC a completed FCC Form 470, setting forth its technological needs and the services for which it seeks discounts. The school or library is required to comply with the Commission's competitive bidding requirements as set forth in sections 54.504 and 54.511(a) of our rules and related orders. The school or library is the entity that submits FCC Form 471, notifying the Administrator of the services that have been ordered, the service providers with whom it has entered into agreements, [*14] and an estimate of the funds needed to cover the discounts to be provided on eligible services.

n31 As noted above, the *Commitment Adjustment Order* provided two examples of fund disbursements resulting in statutory violation requiring recovery: (1) funding committed for ineligible services, and (2) funding for telecommunications services provided by non-telecommunications carriers. *Commitment Adjustment Order* at para. 4.

12. To be sure, service providers have various obligations under the statute and our rules as well. Among other things, the service provider is the entity that provides the supported service, and as such, must provide the services approved for funding within the relevant funding year. The service provider is required under our rules to provide beneficiaries a choice of payment method, and, when the beneficiary has made full payment for services, to remit discount amounts to the beneficiary within twenty days of receipt of the reimbursement check. But in many situations, the service provider simply is not in a position to ensure that all applicable statutory and regulatory requirements have been met. n32 Indeed, in many instances, a service provider may [*15] well be totally unaware of any violation. In such cases, we are now convinced that it is both unrealistic and inequitable to seek recovery solely from the service provider.

n32 See, e.g., MCI Petition at 3 (service provider does not have authority or ability to review the eligibility of requested services); USTA Petition at 7 (service provider does not provide data contained in funding application); GCI Comments at 6 (service provider may be totally unaware that applicant not in compliance with rules); Qwest Comments at 10 (service provider has limited ability to monitor how applicant uses service).

13. We conclude that recovering disbursed funds from the party or parties that violated the statute or a Commission rule will further our goals of minimizing waste, fraud and abuse in